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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/319,243	08/05/1999	PING LIONG TJOA		2663

23664 7590 02/27/2006

FROHWITTER  
THREE RIVERWAY  
SUITE 500  
HOUSTON, TX 77056

EXAMINER

HAMILTON, LALITA M

ART UNIT PAPER NUMBER

3624

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/319,243

Applicant(s)

TJOA, PING LIONG

Examiner

Lalita M. Hamilton

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Summary**

On September 13, 2005, an Office Action was mailed to the Applicant rejecting claims 12 and 14-23. On November 29, 2005, the Applicant responded by amending claims 12 and 19-21.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 14-16, and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bosko (3,334,899), as set forth in the previous Office Action.

With regard to amended claims 12 and 19-21, Bosko discloses each end element having a spherical region (10,11) and the total length of the training apparatus between and including the spherical regions is the approximately in the range of the length of the shoulder span of the person using it (col.5, lines 40-45—short or long bars of any size may be used).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bosko in view of Coallier (5,580,336), as set forth in the previous Office Action.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosko on view of Jackson (4,002,163), as set forth in the previous Office Action.

### ***Response to Arguments***

Applicant's arguments filed November 29, 2005 have been fully considered but they are not persuasive.

Argument: The prior art does not disclose that massaging the palms can be effected, or that body bearing motion can be promoted.

Response: The Applicant has no method claims. The Applicant has apparatus claims. The prior art of record possess the capability of being utilized in any manner that the user desires.

Argument: The Bosko reference does not disclose that the end elements each have a spherical region the diameter of which can be adapted to the palm of the hand of the person using it.

Response: Bosko discloses each of the end elements having a spherical region (10, 11) and that the spherical regions may be of any practical size and of any convenient shape which would become advisable for all practical reasons on the device of physicians or trainers (col.1, lines 35-50). The Applicant claims "adapted to the palm of the hand of the person using it". This range is very broad, since the palm of the hand of the person using it may be on any size and shape. *Anticipation of ranges under 102 (MPEP 2131.03): The prior must teach a range within, overlapping, or touching a claimed range.* Bosko discloses that the spherical regions may be of any size or shape; therefore, the Examiner is interpreting Bosko as reading onto the invention substantially as claimed.

Argument: Neither Coallier nor Jackson teach that the spherical end elements can have a diameter adapted to the palm of the hand.

Response: Bosko discloses a device in which the spherical surface may be of any size and shape, but is silent as to precise ranges (claim 17: radius of the spherical surface is in a range of between 30mm and 75mm). Bosko does not disclose a minimum diameter of the conversely concave region and said turning region in the range of between 17 mm and 25 mm (claim 18) or the total length of the apparatus between and including said spherical regions being between 200 and 1200 mm (claims 19-21), but discloses that the device may be any size or shape. Coallier teaches a hand exerciser having spherical surface in the range of between 30 mm and 75 mm (col.3, lines 25-42). Jackson teaches an exerciser and massager having minimum diameter of the conversely concave region and said turning region in the range of

between 17 mm and 25 mm (col.2, lines 15-36) and the total length of the apparatus being between 200 and 1200 mm (col.2, lines 15-36). *Obviousness ranges under 103: the claimed invention range lies inside a broad range disclosed by the prior art but not "sufficiently specific" to anticipate (MPEP 2144.05).* Therefore, the Examiner is interpreting the combination of Bosko and Coalier and the combination of Bosko and Jackson as reading onto the invention substantially as claimed.

Argument: The Examiner has failed to consider extrinsic evidence.

Response: The Examiner had considered all evidence (both data and declarations) presented by the Applicant even before the Applicant went to the Board. The rule 1.132 affidavit filed with the Appeal Brief on March 13, 2003 was taken into consideration by the Examiner at that time. The Examiner has not ignored the Applicant's evidence.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

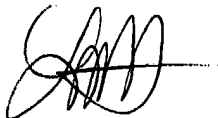
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M. Hamilton whose telephone number is (571) 272-6743. The examiner can normally be reached on Tuesday-Thursday (6:30-2:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

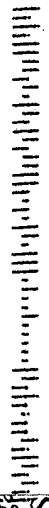


LMH  
Primary Examiner, 3624

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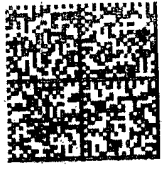
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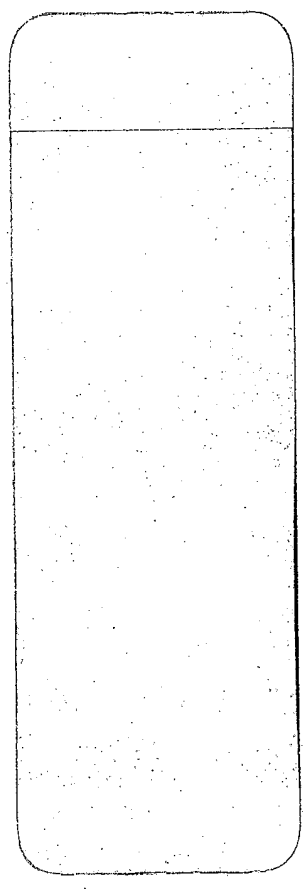
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